

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

EXETER TOWNSHIP,

Plaintiff,

v.

ERIC GARDECKI,

Defendant.

No. 5:18-cv-01723

ORDER

AND NOW, this 10th day of July 2019, upon consideration of Plaintiff's First Amended Complaint, ECF No. 9; Defendant's Motion to Dismiss for Failure to State a Claim, ECF No. 10; Plaintiff's Response to Defendant's Motion to Dismiss, ECF No. 12; Plaintiff's Supplemental Brief in Support of Its Opposition to Defendant's Motion to Dismiss, ECF No. 14, and Defendant's Supplemental Brief, ECF No. 15, and for the reasons set forth in the accompanying Opinion, **IT IS ORDERED** that:

1. Defendant's Motion to Dismiss for Failure to State a Claim, ECF No. 10, is **GRANTED**.
2. The Claim in Count I asserting a violation of the federal Stored Communications Act is **DISMISSED with prejudice**.¹
3. The state law claims in Counts II and III are **DISMISSED without prejudice** to be refiled in the proper state court.
4. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.

United States District Judge

¹ The Court dismisses this claim with prejudice because permitting leave to amend a second time would be futile. *See Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000) ("‘Futility’ means that the complaint, as amended, would fail to state a claim upon which relief could be granted.”).